

**NATIONAL CRIME PREVENTION AND PRIVACY COMPACT
USER FEE TASK FORCE MEETING
SAN ANTONIO, TEXAS
August 18, 2004**

The National Crime Prevention and Privacy Compact Council (Council) User Fee Task Force held its inaugural meeting in San Antonio, Texas, at the San Antonio Marriott Rivercenter on August 18, 2004. The following Task Force members or proxies were in attendance:

Ray A. Morrow, FBI Criminal Justice Information Services (CJIS) Division;
Tracy L. Pacoe, FBI CJIS Division;
Debra L. Long, FBI CJIS Division;
Bob Taylor, Idaho State Police;
Thomas Turner, Virginia State Police;
Terry Gibbons, Georgia Bureau of Investigation (GBI);
Wilbur Rehmann, Montana Department of Justice (DOJ);
Donna M. Uzzell, Florida Department of Law Enforcement (FDLE);
Todd C. Commodore, FBI CJIS Division;
John H. O'Brien, New Jersey State Police;
Jeffrey Kellett, New Hampshire State Police; and
Lana Adams, Office of Personnel Management Center for Investigative Services, and serving as proxy for Kathy Dillaman;

Additional Attendees:

Barbara S. Wiles, FBI CJIS Division;
Frank Campbell, U.S. DOJ, Office of Legal Policy;
Christopher P. Yochim, FBI CJIS Division;
Bob McKeever, Maryland;
Paul Heppner, GBI
Martha Wright, FDLE
Paul Woodward, SEARCH
Owen Greenspan, SEARCH
Allen Wayne Nash, FBI CJIS Division;
James Princeton Gray, FBI CJIS Division; and
Danny Ray Moye, FBI Office of the General Counsel (OGC)

Mr. Todd C. Commodore, FBI Compact Officer, opened the meeting and welcomed attendees to San Antonio, Texas. Following the introductions of additional attendees, Mr. Commodore opened the meeting with Topic #1.

Topic #1 Overview of FBI User Fee Program

Mr. Danny Ray Moye, FBI OGC, advised attendees of the restrictions of the federal government and its inability to charge fees unless authorized by federal law. Specifically, he referred to 31 United States Code (U.S.C.) 302 which requires the FBI and the federal government to deposit any monies collected into the U.S. Treasury, not into a proprietary account held by the respective

federal agency. According to Mr. Moyer, Congress did make an exception to 31 U.S.C. with its passage of Public Law 101, which authorizes the FBI to charge user fees for fingerprint processing for licensing and employment purposes. According to this statute, those fees can only be used for personnel and system support that directly relate to noncriminal justice administrative functions.

In his discussion, Mr. Moyer also referred to Title 42, U.S.C. (National Crime Prevention and Privacy Compact Act) Article V (d) which specifically addresses when the states and FBI can and cannot charge fees. According to Article V (d), a state criminal history record repository or the FBI (1) may charge a fee in accordance with applicable law for handling a request involving fingerprint processing for noncriminal justice purposes and (2) may not charge a fee for providing criminal history records in response to an electronic request for a record that does not involve a request to process fingerprints. Additionally, Mr. Moyer informed the Task Force that upon implementation of the program in the 1990s, the CJIS Division lost approximately \$30 million in its appropriated funds.

In summary, Mr. Moyer stated that the federal government cannot charge fees unless authorized by Congress. Additionally, when authorized, those fees must be used in accordance with the purposes identified by federal law.

Ms. Donna M. Uzzell, FDLE, asked what amount is collected annually in the FBI User Fee Program. Ms. Debra L. Long, CJIS Division, advised that the FBI expected to collect approximately \$166 million at the beginning of the fiscal year. Since that time, the expected collections have been reduced to \$153 million. However, Ms. Long advised that collections from user fees are used to offset the expenses of the program. Therefore, according to Ms. Long, the FBI's fees are designed to "break even". Fee collections cover personnel compensation and system operations and maintenance (utilities, systems hardware, etc). Additionally, the User Fee Program supports 100 percent of Council initiatives, including travel and meeting expenses, the Advisory Process, and National Fingerprint File (NFF) on-site assessments.

Attendees also questioned whether the FBI also received appropriations for the aforementioned initiatives in addition to the user fee revenue. Ms. Long advised that the overall budget for the CJIS Division is over \$300 million; therefore, the User Fee Program only covers a portion of the CJIS Division operations. As an example, Ms. Long explained that the National Instant Criminal Background Check System (NICS) Section and the CJIS Division's criminal justice services are covered solely by appropriated funds.

Upon further discussion, the Task Force questioned whether the appropriations were adjusted if the User Fee Program generates monies over the anticipated amount. Ms. Long advised that the appropriations are not adjusted based upon fee collections. It is difficult to break even when budgets are projected up to two years in advance. Although expenditures are constantly monitored, it is very difficult to project how much of the user fee monies can be collected. Ms. Uzzell then asked if overages are deposited into a U.S. Treasury account or does the FBI retain the monies. Ms. Long stated that guidelines dictate that any overage be remitted to the U.S. Treasury, not retained by the CJIS Division.

Mr. John O'Brien questioned whether excess user fee monies that have been allocated for a specific expense are retained by the CJIS Division or returned to a general fund. Ms. Long further explained that the excess monies, over the last few years, have been transferred to the DOJ's working capital fund. Currently, the CJIS Division is working with the Office of Management and Budget (OMB) and the DOJ to have those funds returned to the CJIS Division for disaster recovery efforts.

Mr. O'Brien asked what amount typically is returned to the CJIS Division. Ms. Long stated that the amount varied and she would have to conduct further analysis to determine the amount.

Mr. Paul Heppner, Georgia Bureau of Investigation, requested further explanation by Mr. Moyer on Article V (d) of the Compact which speaks to fees.

Mr. Moyer explained that his understanding of Article V (d) of the Compact would indicate that fees could not be assessed by either the states or the FBI if the request was an electronic record request with an FBI number. However, both the states and FBI could charge a fee for noncriminal justice fingerprint processing to search their respective repositories to identify if the subject had a criminal record.

The Task Force further discussed both the states' and FBI practices for requesting copies of records from the Interstate Identification Index (III) System. Mr. James Princeton Gray, CJIS Division, advised that similarly both the states and FBI may collect fees for fingerprint processing. Specifically, states collect both the state and FBI fee and assuming an identification is made at the state repository, the state can retrieve the record from the FBI. Additionally, some states have indicated they retain the FBI fee in these cases..

Mr. Commodore advised that in 2004 the FBI estimates that states will conduct approximately 65,000 III Purpose Code I inquiries, which means that states will not have to forward fingerprint submissions for a national check 65,000 times. Additionally, the FBI estimates that they will conduct approximately 110,000 record requests from NFF participating states once an identification is made at the national level. Further, Mr. Commodore advised that there are states that do not take advantage of the Purpose Code I inquiry capability and forward every submission for a national check even when an identification is made at the state level.

Attendees then focused on a recent legislative trend whereby Congress is authorizing submissions to come directly to the FBI for criminal history background checks. According to Ms. Uzzell, the Task Force, in future discussions, should consider how bypassing the states impacts their ability to collect fees and maintain their repositories. This issue becomes more problematic once the majority of states become NFF participants. In that case, the FBI will only be serving as a pointer to the state records, thus the majority of the records will be maintained by the states and the FBI will be the only agency collecting revenue to support their infrastructure. In future consideration of NFF growth, Mr. Commodore asked the Task Force to consider the FBI support of the NFF program. Mr. Commodore pointed out that the FBI is also a participant of the NFF program. The FBI, for example, maintains approximately 4.5 million federal records, 1.4 million records for NFF states and 17.8 million records for III states. Further,

Mr. Commodore requested that should the Task Force look at fee compensation for states, then they consider a reciprocal approach whereby the FBI would be compensated should a state request a federal record without forwarding a fingerprint submission for a national search. Additionally, Mr. Commodore requested clarification on whether the Task Force's concern was only when fingerprint submissions bypassed the states or was the Task Force considering compensation anytime an NFF participant provided a record.

Ms. Uzzell responded that it was premature to consider any focus as she considered the Task Force's current mission was to become educated on the states' and FBI user fee structures. The impetus being on new legislation such as the Prosecutorial Remedies and Other Tools to End the Exploitation of Children Today (PROTECT) Act of 2003 and similar laws which may impact literally millions of individuals who will need criminal history record checks.

Mr. Wilbur Rehmann, Montana DOJ, asked Task Force members to consider the need for a collective voice to approach Congress on the issue of a national volunteer program. According to Mr. Rehmann, the Compact Council, Advisory Policy Board, FBI, and states should recommend that any national volunteer program should be 100 percent appropriated. Additionally, he recommended that there should be compensation for states who choose to participate in the national program as they are providing their records.

Mr. Frank Campbell, Assistant Attorney General, DOJ, cautioned the Task Force in their assumption that Congress has or would consider appropriating the cost of a national volunteer program. Instead, he believes that Congress, with the PROTECT Act legislation, is trying to create incentives for the states to participate in the program and reduce the barriers for the states to get involved.

Topic #2 Overview of State User Fee Programs

Florida

Ms. Donna Uzzell provided an overview of Florida's User Fee Program and Automated Fingerprint Identification System (AFIS) (**See Attachment 1**). Ms. Uzzell advised the Task Force that Florida's current criminal history repository is over 30 years old. Additionally, Florida's current AFIS was built in 1988 and is completely outdated and operating at full capacity. Further, Florida is in the process of deploying a new \$55 million AFIS. Ms. Uzzell stated that federal grants have played a very small role in their current system upgrades.

Ms. Uzzell reported that during Fiscal Year (FY) 2003 - 2004, there were approximately 696,000 state and national checks under Public Law 92-544 or similar statutes. There were an additional 54,000 state and national checks under the National Child Protection Act (NCPA)/Volunteers For Children Act. Finally, there were over 1.1 million state checks under the Florida Public Record Law. Florida's user fee revenue for FY 2003-2004 was approximately \$38 million. According to Ms. Uzzell, the user fee revenue is used to support almost all of the criminal justice information services within the FDLE, including Florida's criminal justice services.

Lt. John O'Brien questioned whether \$38 million supported all of the CJIS Division services or whether FDLE also used separate appropriations. Ms. Uzzell replied that historically the user fee revenue supported all of their CJIS Division services; however, during FY 2003 some money was shifted to support the system upgrades. Mr. Jeff Kellett, New Hampshire State Criminal Records, raised the issue of states using their user fee revenue to support their criminal justice services, which is unlike the FBI which depends on separate appropriations for its criminal justice services. Further, he advised the Task Force that upon reaching a conclusion, they may want to advise Congress that states' criminal justice services could be compromised if their ability to generate user fee dollars was stifled.

Ms. Uzzell responded that the \$38 million only accounts for a portion of Florida's CJIS budget. Mr. Kellett stated that in New Hampshire consideration is given to whether services are criminal justice or noncriminal justice in nature when formulating budgets.

Georgia

Ms. Terri Gibbons, GBI, provided the update on Georgia's User Fee Program. According to Ms. Gibbons, Georgia processes between 150,000 and 170,000 background checks each year, which accounts for approximately 30 percent of their total workload. Georgia charges \$15 for a state fingerprint check and does not provide name-based checks. Further, Ms. Gibbons advised that Georgia's fee for processing state fingerprint checks has remained unchanged for the last 10 to 12 years. Additionally, Ms. Gibbons advised that Georgia has 22 Public Law 92-544 statutes in place. However, Georgia does not charge their state fee on top of the federal fee when conducting both a state and an FBI check. Georgia advised that its user fee revenue (about \$500,000) is turned over to the state treasury and it relies solely on appropriations to support GBI services.

Mr. Paul Heppner, GBI, added that Georgia's low fingerprint volume has been impacted by local law enforcement agencies within Georgia providing criminal record checks. Georgia state law authorizes agencies to distribute name-based record checks to anybody with the consent of the individual. Mr. Heppner further added that as electronic fingerprint capture becomes more available and individuals become more aware of the benefits of fingerprint checks versus name checks, Georgia should realize an increase in state applicant fingerprint checks.

Idaho

Mr. Bob Taylor, Idaho State Police, provided an overview on Idaho's User Fee Program (**See Attachment 2**). Mr. Taylor referred Task Force members to the organization chart handout which indicates what positions are funded from their User Fee Program. Mr. Taylor advised that Idaho's Bureau of Criminal Identification operates under a \$2.1 million budget. Of that amount, approximately 37 percent is generated by Idaho's User Fee Program. One cost savings to Idaho is in AFIS support as it is a member of the Western Identification Network (WIN), thus it has no direct operational and maintenance AFIS costs. The shared AFIS, operated by WIN, has eight member states and was deployed in 1989 with a major upgrade in 1999. Additionally, another upgrade is scheduled next year. Idaho pays a recurring monthly fee of \$28,000 to support the shared AFIS concept, which will support any future upgrades needed to WIN's AFIS.

Mr. Taylor added that Idaho has approximately 50-60 Public Law 92-544 statutes, along with the umbrella statute, which contributes to its high fingerprint volume. Another strategy employed by Idaho is that it does not bill client agencies until a bill is received from the FBI; thus Idaho covers the cost of its local agencies' federal checks prior to billing them for those services. Additionally, Idaho does not charge a federal fee unless the fingerprints are forwarded to the FBI.

Ms. Uzzell questioned whether Idaho's total user fee receipts were \$800,000. Mr. Taylor affirmed and advised that BCI is able to retain their monies generated from Idaho's User Fee Program.

Ms. Uzzell also questioned whether Idaho has any retention issues. According to Mr. Taylor, Idaho is prohibited from retaining noncriminal justice submissions; however, Idaho is planning to retain the Hazmat submissions.

Mr. Campbell questioned who sets the fees in Idaho. Mr. Taylor advised that the fee is proposed to the legislature and is set by rule. Additionally, Mr. Taylor advised that the fees are not calculated scientifically, but are estimated on program support.

New Jersey

Mr. John O'Brien provided an overview on New Jersey's User Fee Program (**Attachment 3**). According to Mr. O'Brien, New Jersey's repository was established in 1930 and provided noncriminal justice background checks free of charge until 1982. In 1985, a formal User Fee Program was established to offset state support of noncriminal justice administrative functions. Initially, the User Fee Program was set up to be used exclusively by the state repository to hire personnel and to fund overtime to ensure timely responses to submitting agencies. In 1994, the state legislature placed control of user fee revenue under the Department of Law and Public Safety (Department). Mr. O'Brien further advised that state fingerprint checks in New Jersey are \$30, except for volunteers, who are charged \$18. Additionally, New Jersey does support name checks at a cost of \$18, except for volunteer name checks, where a \$10 fee is assessed.

In 1993, New Jersey implemented a flagging system to provide automatic notification to a local agency if a subject had been arrested by state law enforcement. The current fee for flagging a subject in the repository is \$10, which is added on to the state processing charge.

During FY 2004, state user fee revenue generated almost \$18 million and the Department netted approximately \$13 million. According to Mr. O'Brien, the Department's FY 2005 budget is projected at \$21.6 million. This consists of a projection of \$19 million of generated revenue from user fee, one million dollars in direct budget appropriations and approximately \$1.6 million in carryover from FY 2004.

Topic #4 Discussion on FBI Draft Report to Congress on the PROTECT Act

Mr. Commodore advised the Task Force that a discussion of the draft report surfaced during the July 2004 SEARCH Meeting when members of a SEARCH PROTECT Act Task Force

identified concerns of the draft report. As such, given the scope of the committee and the report, Mr. Commodore recommended that the User Fee Task Force discuss with Mr. Allen Wayne Nash, PROTECT Act Program Manager, any issues/concerns with the report.

Mr. Nash advised that the interim report was forwarded to the DOJ in April 2004 for final review. The next step is for DOJ to release the interim report. The final report is due to Congress in March 2005. Mr. Frank Campbell, DOJ, advised that the interim report is in the review process and DOJ is also considering the comments received by the SEARCH Task Force. From his initial review, Mr. Campbell advised attendees that the interim report addressed the questions identified in the legislation. Additionally, he felt that the final report should be very similar. He is recommending that FBI staff obtain input from SEARCH and the Council regarding the interim report.

Mr. Tom Turner, Virginia State Police, advised that the SEARCH Task Force's first priority was to finalize their comments and provide them to DOJ so that they could be given consideration during the review process. In summarizing SEARCH's comments, Mr. Campbell felt additional consideration may need to be given to states that want to serve as a channeler for PROTECT or NCPA. Further, Mr. Campbell advised that he visited Florida and was able to witness how the program works with states disseminating records to the qualified entities. Mr. Campbell also stated that the SEARCH may need to resurvey the states to identify the number that are willing to serve as channelers in light of SEARCH's claims that additional states would serve as channelers should they be authorized to pass the suitability decision to the qualified entity.

Mr. Turner questioned why the fee waiver month was not extended. Mr. Nash responded that the FBI did consider waiving the fee; however, the CJIS Division opted not to extend the fee waiver.

Mr. Wilbur Rehmann, Montana DOJ, advised that he was disappointed in the response from the "fee waiver" month. Mr. Nash replied that he would like to have seen more participation during that period; however, the average number of submissions increased considerably during that time and in some cases doubled. Additionally, Mr. Nash advised that the FBI promoted the "fee waiver" period very heavily and over 1000 fingerprint cards were mailed to volunteer agencies.

Mr. Bob Taylor, Idaho State Police, stated that there are two pilots currently underway due to federal legislation. The first was the PROTECT Legislation and the second was the Medicare Prescription Drug and Modernization Act of 2003. Mr. Taylor stated that he felt the methodology used on the second legislation was very promising and may provide a better picture of state participation than requested by Congress in the PROTECT Act legislation. Further, Mr. Taylor stated that some of the questions posed up front in the Medicare legislation should have been included in the PROTECT Act legislation.

In support of Mr. Taylor's comments, Ms. Uzzell stated that the Medicare legislation seems to confirm state concerns over the PROTECT Act in that pertinent questions/issues were not identified in the legislation. Mr. Campbell added that some of the questions posed in legislation will not address key issues. For example, everyone supports the concept of electronic

submission and everyone supports the concept of no fees. However, there are other cultural issues that are hard to pin down in a pilot, but have a tremendous impact on participation.

Mr. Taylor stated that he had concerns with the interim findings of the PROTECT Act report, specifically, on state participation should the law be adjusted to allow dissemination of criminal records to the volunteer agency. In response, Mr. Nash stated that the PROTECT Act feasibility study was a description of models identified in the legislation and that he had no issue with adding a model depicting that business practice. The reason that module was not included in the current pilots or that draft report is that it is not currently legally authorized.

Attendees asked Mr. Nash if recommendations made by the Council in November could still be considered in the final report. Mr. Nash advised that the comments could be considered as long as DOJ approved the timeline.

In conclusion, Mr. Campbell advised the FBI that he supported an additional pilot, based on the Florida model, whereby the criminal history record information is passed to the volunteer agency for them to conduct the suitability decision.

Mr. Nash advised that he would contact Florida and add the model to the final report.

Topic # 5 Additional Points of Consideration

In summary, Ms. Uzzell requested that Task Force members give further consideration to the Task Force's scope and mission and provide Mr. Commodore with comments via email within two weeks. Ms. Uzzell stated that the first meeting was very educational and it should be easier to narrow the Task Force's focus. Mr. Commodore advised that the meeting minutes and handouts would be forthcoming along with future meeting information.